

SEP 13 2010

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION OF LICENSE FOR)	OF LAW, RECOMMENDED ORDER
ANTHONY JACKSON.)	AND ORDER
)	
)	CAUSE NO. A-1884
)	

This matter came for hearing on the 8th day of September, 2010, before Joel F. Green, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Michael Boyd. Anthony Jackson ("Jackson") was present and was not represented by counsel. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Jackson has applied to become a resident licensed insurance producer with the State of Nebraska. Jackson applied for said license on or about July 16, 2010. Within the uniform application for individual insurance producer license, Jackson indicated that he has not been convicted of a crime, had a judgment withheld or deferred, or is currently charged with committing a crime. (See Ex. 3)

2. During its review of Baker's application, the Department ran a "Justice" search in order to check Jackson's criminal background in the State of Nebraska. In its search, the Department found that Jackson failed to provide a complete listing of previous criminal convictions including: a conviction in 2001 for theft by unlawful taking under \$100, a misdemeanor; a conviction in 2002 for obstruction of the administration of law, a misdemeanor; a conviction in 2003 for assault and battery, a misdemeanor; a conviction in 2003 for possession of marijuana – 1 ounce or less – 1st offense, a misdemeanor; and a conviction in 2005 for theft by unlawful taking under \$100, a misdemeanor. (See Ex. 4 & 6)

3. The documents obtained by the Department during the "Justice" search indicate the conviction for possession of marijuana – 1 ounce or less was set aside and nullified by the court on November 9, 2006. Said documents also indicate Jackson was granted a pardon by the Nebraska Pardons Board on September 22, 2008, for the remaining criminal convictions. (See Ex. 4)

4. Jason McCartney ("McCartney"), licensing administrator for the Nebraska Department of Insurance, denied Jackson's license application on the grounds that he had been convicted of a felony or Class I, II or III misdemeanor pursuant to NEB. REV. STAT. § 44-4059(1)(f) (Reissue 2004) and that Jackson provided incorrect, misleading, incomplete, or materially untrue information in the license application by failing to disclose the aforementioned criminal conviction pursuant to NEB. REV. STAT. § 44-4059(1)(a). (See Ex. 5)

5. On or about July 27, 2010, notice of said denial was provided to Jackson at the business address contained on his application, AAA-The Auto Club Group, 4010 S. 148th Street, Omaha, NE 68137, via regular U.S. mail. (See Ex. 5)

6. On or about August 10, 2010, Jackson submitted a written request for a hearing on the denial of his license application pursuant to NEB. REV. STAT. § 44-4059(2) (Reissue 2004). (See Ex. 2)

7. On or about August 19, 2010, a Notice of Hearing in this matter was submitted to Jackson by certified mail, return receipt requested, at AAA-The Auto Club Group, 4010 S. 148th Street, Omaha, NE 68137. On or about August 24, 2010, the domestic return receipt attached to the certified letter was returned to the Department by the United States Postal Service ("USPS") indicating delivery of the Notice of Hearing on August 23, 2010. (See Ex. 1)

8. On or about August 30, 2010, an Amended Notice of Hearing in this matter was submitted to Jackson by certified mail, return receipt requested, at AAA-The Auto Club Group, 4010 S. 148th Street, Omaha, NE 68137, in an attempt to address errors contained in the original Notice of Hearing. On or about September 2, 2010, the domestic return receipt attached to the certified letter was returned to the Department by the USPS indicating delivery of the Amended Notice of Hearing on September 1, 2010. In an electronic mail communication with the Department dated August 30, 2010, Jackson indicated his desire to still proceed with the September 8, 2010, hearing date and time and waived the statutory requirement for the ten day notice requirement. (See Ex. 1)

9. At the hearing, Jackson admitted his guilt of the aforementioned crimes and though he did not purposely intend to deceive anyone, he did fail to include all applicable criminal convictions in his application. Jackson testified that a full pardon for the aforementioned criminal convictions was granted to him by the State of Nebraska Board of Pardons on or around September 22, 2008, and that it was his belief that the pardon negated the need for him to list any criminal conviction in his application for licensure as a resident insurance producer. A copy of

the full pardon granted to Jackson by the State of Nebraska Board of Pardons for the aforementioned criminal convictions was provided to the court as was an undated dispute letter submitted by Jackson to One Source, a company whose primary function is to engage in individual background checks, referencing the pardon granted to Jackson and requesting the company recognize that each of the aforementioned criminal convictions were pardoned on September 22, 2008. (See Ex. 7 & 8)

10. Jackson testified that the 2001 conviction for theft by unlawful taking of \$100 or less resulted from his taking a small amount of cash from a register while employed at Sears and that the 2005 conviction for the same offense resulted from his failure to pay for gasoline he obtained from a convenience store inside the city limits of Omaha, Nebraska. In his testimony, Jackson did not deny the allegations leading to his convictions in the aforementioned criminal proceedings but did acknowledge he was remorseful of his actions.

11. Jackson further testified that he has attempted to make amends for his past actions by leading a productive life and by becoming a lawful citizen and supportive husband and father and would simply like the chance to earn a decent living. Jackson indicated that he has maintained a clean criminal record for the past five years and has enrolled with the University of Phoenix in an attempt to obtain an associate of arts degree with a concentration in accounting. (See Ex. 9)

12. Jackson also testified that he currently works for AAA-The Auto Club Group ("AAA") as a customer advocate assisting clients of AAA with their insurance needs and that to maintain his employment, he must obtain an insurance producer license. Jackson indicated that his day to day functions are closely managed by a supervisor in a structured environment and that all his interactions with clients are audio recorded for quality assurance. Jackson further

testified that he will not be handling cash payments for AAA but that he will be responsible for processing electronic payments made by AAA clients.

DISCUSSION

Having reviewed the evidence presented by the Department and taking into account the testimony provided by Mr. Jackson, I am concerned not only with Mr. Jackson's apparent failure to provide a complete application, but also with his criminal past. The fact that Mr. Jackson has twice been convicted for theft by unlawful taking under \$100 cannot not be taken lightly when deliberating this matter as the ability for an individual to act in a honest and unfaltering fiduciary capacity is a necessary component of becoming a licensed insurance producer.

Alternatively, this hearing officer cannot ignore the concerted measures taken by Mr. Jackson within the last five years to become a more constructive member of society including his ability to maintain a clean criminal record, enrollment in an institute of higher education with the goal of obtaining an associate degree in a business related field, and finding steady employment with a well recognized insurance entity. If granted a license, Mr. Jackson would be afforded the chance of continuing to become a productive member of society with the opportunity to work for AAA which has provided Mr. Jackson with a stable and structured working environment.

Equally compelling is the full pardon issued to Mr. Jackson by the Nebraska Board of Pardons. More specifically, great weight could be given to the Board's specific finding that Mr. Jackson was "a fit subject for clemency, that the public good would be served by granting such application, and that a pardon should be bestowed by the government through its duly authorized officers, as an act of grace."

Though the record clearly establishes Mr. Jackson failed to provide to the Department a complete application, it does not appear that this failure was purposeful or done with an obvious intent to hide the full extent of his criminal history from the Department. Rather, Mr. Jackson's confusion with respect to detailing his criminal history on the application for licensure is understandable in light of the pardon from the Nebraska Board of Pardons granting clemency for Mr. Jackson's criminal history.

While the Department has made a compelling argument to uphold the license application denial of Mr. Jackson, the applicant has admitted to his prior mistakes, indicated he has grown as a person, and is seeking to atone for his previous convictions. Since it would appear that at least one insurance company is willing to offer Mr. Jackson the chance to work in a closely monitored working environment, it is my recommendation Mr. Jackson's license be granted.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of Jackson to sell insurance in the State of Nebraska pursuant to NEB. REV. STAT. §§ 44-101.01 and 44-4047 ET SEQ.
2. The Department has personal jurisdiction over Jackson.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, the following is recommended for adoption by the Director of Insurance:

1. Jackson's application for an insurance producer's license should be granted.

2. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 10th day of September, 2010.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



JOEL F. GREEN
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department in the matter of the Denial of Application for License for Anthony Jackson, Cause No. A-1884.

Dated this 13th day of September, 2010.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon Mr. Anthony Jackson by mailing a copy to Respondent's registered business address, at AAA-The Auto Club Group, 4010 S. 148th Street, Omaha, NE 68137, by certified mail, return receipt requested, on this 13th day of September, 2010.

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